

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DUSTIN BURNIKEL,)	
)	
Plaintiff,)	Case No. 4:15-cv-00050
)	
v.)	
)	
MICHAEL FONG, individually and in his)	
official capacity as a law enforcement)	
officer with the Des Moines Police)	JOINT STATEMENT
Department; GREG WESSELS,)	OF THE CASE
Individually and in his official capacity)	
As a law enforcement officer with the)	
Des Moines Police Department; and)	
CITY OF DES MOINES, IOWA,)	
)	
Defendants.)	

COME NOW, the parties and submit to the Court their joint statement of the case pursuant to Fed. R. Civ. P. 16€ and LR 16.1:

Statement of the Case

This is a civil case brought by the Plaintiff, Dustin Burnikel against the Defendants Michael Fong and Gregg Wessels, police officers employed by the Des Moines Police Department.

Mr. Burnikel asserts a claim of “excessive force” in violation of the Fourth Amendment to the United States Constitution against Mr. Fong and also Mr. Wessels. Mr. Burnikel also asserts that the officers each committed a “battery” against him in the process of arrest. Mr. Fong and Mr. Wessels deny these claims.

Mr. Burnikel has also brought a claim of a “false arrest” under the Fourth Amendment to the United States Constitution against Mr. Fong and also Mr. Wessels. Mr. Burnikel further asserts that the officers each subjected him to a “malicious prosecution” for alleged criminal violations. Mr. Fong and Mr. Wessels also deny these claims.

You have been chosen and sworn as jurors to try the issues of fact related to the plaintiff’s claims. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings,

prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons, including the Plaintiff, Mr. Burnikel, and the Defendants, Mr. Fong and Mr. Wessels, stand equal before the law, and each is entitled to the same fair consideration.

/s/ James R. Wyrsh

James R. Wyrsh
Javad M. Khazaeli
Kiara N. Drake
KHAZAELI WYRSCH LLC
911 Washington Ave., Suite 211
St. Louis, MO 63101
Telephone: 314-288-0777
james.wyrsh@kwlawstl.com
(Admitted Pro Hac Vice)

/s/John O. Haraldson

John O. Haraldson
Assistant City Attorney
City of Des Moines
400 Robert D. Ray Drive
Des Moines, IA 50309-1891
(515)283-4072
Facsimile: (515)237-1748
joharaldson@dmgov.org

ATTORNEY FOR DEFENDANTS

/s/ Justin K. Swaim

Justin K. Swaim AT0007788
Swaim Law Firm, P.L.L.C.
701 13th Street, Suite 2
West Des Moines, IA 50265
Telephone: 641-777-5120
Facsimile: 515-777-1127
justin@swaimlawfirm.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on, October 24, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and a true copy of the foregoing was electronically sent via the Clerk of Court.

/s/ John O. Haraldson
John O. Haraldson
Assistant City Attorney